Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 08(F)-633–08 OF 2012(R) AND 01(F)-20–08 OF 2012(R)
ARIFIN ZAKARIA CHIEF JUSTICE, RAUS SHARIF PCA, HASHIM YUSOFF, ABDULL HAMID EMBONG AND JEFFREY TAN FCJJ
7 OCTOBER 2013

Land Law — Acquisition of land — Compensation — Appeal against amount of compensation awarded by High Court on reference — Whether High Court's decision on amount of compensation final and not appealable — Whether leave to appeal to Federal Court from decision of Court of Appeal not required under s 49(1) of the Land Acquisition Act 1960 — Land Acquisition Act ss 40D & 49(1)

The appellants in this case were some of the co-owners of three lots of land and were unhappy with the compensation that was awarded to them for the acquisition of those lands for the construction of a low-cost housing project. The three lots were originally under a single title and lot number ('the land') before it was subdivided. On conclusion of his enquiry to determine the compensation payable following the acquisition, the land administrator valued the three lots separately. One of the lots was valued at RM3.20 per square foot (psf). Unhappy with the land administrator's award, the appellants required him under the Land Acquisition Act 1960 ('Act') to refer the matter to the High Court. In the High Court, which sat with a government valuer and a private valuer as assessors, the appellants argued that the land administrator should have valued the land as a single entity using the rate of RM3.20 psf and not have valued the three lots separately. Both the assessors unanimously opined that the appropriate rate was RM1.60 psf. The High Court applied that rate in assessing the land as a single unit and, as a result, increased the compensation payable to the appellants ('the additional compensation'). The appellants again appealed, this time over the quantum of the additional compensation, to the Court of Appeal. Their appeal was dismissed. When filing their instant appeal to the Federal Court, the appellants, ex abundanti cautela, applied for leave to appeal but later argued at the appeal hearing that leave to appeal to the Federal Court from a decision of the Court of Appeal was not required under s 49(1) of the Act. The respondent, however, contended that leave to appeal was required under s 96(a) of the Courts of Judicature Act 1964.

Held, striking out the application for leave to appeal with costs and dismissing the appeal with costs:

(1) There was no requirement under s 49(1) of the Act that leave to appeal

must first be obtained before an appeal could be lodged in the Federal Court. Thus, in the present case, there was no necessity for the appellants to have applied for leave to appeal (see para 15).

(2) Whilst s 49(1) of the Act allowed any interested person to appeal against a decision of the High Court to the Court of Appeal, s 40D restricted the ambit of such an appeal. Under s 40D(3), any decision as to the amount of compensation awarded shall be final and there shall be no further appeal to a higher court on the matter. This non-appealable provision of s 40D(3) was further reinforced by the proviso to s 49(1) which read: 'Provided that where the decision comprises an award of compensation there shall be no appeal therefrom'. From this it was very clear that Parliament intended to preclude any party from appealing against an order of compensation made by the High Court (see paras 17 & 20).

(3) The High Court had addressed the principal complaint of the appellants ie that the assessment of the market value should be for the whole land as a single entity and not as three individual lots as was done by the land administrator. However, it rejected the contention that the land ought to be valued at RM3.20 psf and, in compliance with s 40D(1) of the Act, accepted the unanimous opinion of both assessors that the applicable rate was RM1.60 psf resulting in the land administrator's award being increased (see paras 23-22).

(4) The appeal to the Court of Appeal was basically against the amount of compensation awarded by the High Court but such an appeal was precluded by ss 40(D) and 49(1) of the Act (see paras 23–24).

[Bahasa Malaysia summary

Perayu-perayu dalam kes ini adalah pemilik bersama sebahagian tiga lot tanah dan tidak berpuas hati dengan pampasan yang diawardkan kepada mereka untuk pengambilan tanah-tanah tersebut untuk pembinan projek perumahan kos rendah. Ketiga-tiga lot tanah pada asalnya adalah di bawah satu hak milik dan nombor lot ('tanah tersebut') sebelum ia dibahagikan. Atas kesimpulan siasatannya untuk menentukan pampasan yang harus dibayar berikutan pengambilan tanah tersebut, pentadbir tanah menilai ketiga-tiga lot tersebut secara berasingan. Satu daripada lot dinilaikan pada RM3.20 sekaki. Tidak berpuas hati dengan award pentadbir tanah, perayu-perayu mengkehendakinya di bawah Akta Pengambilan Tanah 1960 ('Akta') untuk merujuk perkara tersebut kepada Mahkamah Tinggi. Di Mahkamah Tinggi, yang mendengar dengan penilai kerajaan dan penilai persendirian sebagai penaksir, perayu-perayu berhujah bahawa pentadbir tanah patut menilai tanah tersebut sebagai satu entiti mengunakan kadar RM3.20 sekaki dan bukan menilai ketiga-tiga lot secara berasingan. Kedua-dua penaksir sebulat suara berpandangan bahawa kadar wajar adalah RM1.60 sekaki. Mahkamah Tinggi memohon bahawa kadar untuk menaksirkan tanah sebagai satu unit dan,

akibatnya, menambahkan pampasan yang kena dibayar kepada perayu-perayu ('pampasan tambahan'). Perayu-perayu sekali lagi merayu, kali ini ke atas kuantum pampasan tambahan, kepada Mahkamah Rayuan. Rayuan mereka ditolak. Apabila memfailkan rayuan mereka ini ke Mahkamah Persekutuan, perayu-perayu, *ex abundanti cautela*, memohon untuk izin merayu tetapi kemudiannya berhujah pada perbicaraan rayuan bahawa izin untuk merayu ke Mahkamah Persekutuan daripada keputusan Mahkamah Rayuan tidak dikehendaki di bawah s 49(1) Akta. Responden, walau bagaimanapun, berhujah bahawa izin untuk merayu dikehendaki di bawah s 96(a) Akta Mahkamah Kehakiman 1964.

Diputuskan, membatalkan permohonan untuk izin merayu dengan kos dan menolak rayuan dengan kos:

(1) Tiada keperluan di bawah s 49(1) Akta bahawa izin untuk merayu mesti diperlohehi terlebih terdahulu sebelum rayuan dikemukakan di Mahkamah Persekutuan. Oleh itu, dalam kes ini, tidak ada keperluan untuk perayu-perayu memohon untuk izin untuk merayu (lihat perenggan 15).

(2) Sementara s 49(1) Akta membenarkan mana-mana orang yang berkepentingan untuk merayu terhadap keputusan Mahkamah Tinggi kepada Mahkamah Rayuan, s 40D mengehadkan skop rayuan sedemikian. Di bawah s 40D(3), apa-apa keputusan terhadap jumlah pampasan yang diawardkan akan menjadi muktamad dan tiada lagi rayuan selanjutnya kepada mahkamah lebih tinggi atas perkara tersebut. Peruntukan s 40D(3) yang tidak boleh dirayukan ini diperkuatkan selanjutnya oleh peruntukan kepada s 49(1) yang mana dibaca: 'Provided that where the decision comprises an award of compensation there shall be no appeal therefrom'. Daripada ini adalah jelas bahawa Parlimen berniat untuk menghalang mana-mana pihak daripada merayu terhadap perintah pampasan yang dibuat oleh Mahkamah Tinggi (lihat perenggan 17 & 20).

(3) Mahkamah Tinggi telah mengamati aduan utama perayu-perayu iaitu bahawa penaksiran nilai pasaran patut untuk kesemua tanah sebagai satu entiti dan bukan sebagai tiga lot persendirian seperti yang dibuat oleh pentadbir tanah. Walau bagaimanapun, ia menolak hujahan bahawa tanah tersebut patut dinilaikan pada RM3.20 sekaki dan, dalam mematuhi s 40D(1) Akta, menerima pandangan sebulat suara oleh kedua-dua penaksir bahawa kadar yang boleh diguna pakai adalah RM1.60 sekaki mengakibatkan award pentadbir tanah ditambah (lihat perenggan 23–22).

(4) Rayuan kepada Mahkamah Rayuan pada dasarnya terhadap jumlah

pampasan yang diawardkan oleh Mahkamah Tinggi tetapi rayuan sedemikian dihalang oleh ss 40(D) dan 49(1) Akta (lihat perenggan 23–24).]

Notes

For cases on compensation, see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2194–2241.

Cases referred to

Calamas Sdn Bhd v Pentadbir Tanah Batang Padang [2011] 5 CLJ 125, FC (refd)

Lau Keen Fai v Lim Ban Kay @ Lim Chiam Boon & Anor [2012] 2 MLJ 8, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 96(a)

Land Acquisition Act 1960 ss 12, 38, 38(5), 40D, 40D(1), (3), 49(1), Forms G, N, O

Legal Profession Act 1976 s 103E

Appeal from: Civil Appeal No R-01–396 of 2011 (Court of Appeal, Putrajaya)

K Kirubakaran (S Suhirtha Malar with him) (Peter Miranda & Co) for the appellants.

Abdul Rasid bin Sudin (State Legal Advisor, Perlis) for the respondent.

Raus Sharif PCA (delivering judgment of the court):

INTRODUCTION

[1] There are two matters before us namely Civil Application No 08–633–08 of 2012(R) and Civil Appeal No 01(f)-20–08 of 2012(R). The civil application and civil appeal were filed by the plaintiffs ('the appellants') against the decision of the Court of Appeal delivered on 27 July 2012. The Court of Appeal had dismissed the appellants' appeal against the award of compensation awarded by the High Court under the Land Acquisition Act 1960 ('LAA').

[2] We heard both matters on 13 May 2013. After hearing the parties, we adjourned both matters for our consideration and decision. We now give our

decision and the reasons for the same.

BACKGROUND FACTS

[3] The appellants were some of the co-owners of Lots No 710, No 711 and No 712, held under one title, that is, GM214 Mukim Sungai Adam, Perlis. The three lots were originally known as Lot No 338 measuring 21.3858 hectares ('land'). When it was sub-divided into three separate lots the land area of the individual lots are as follows:

(a) Lot 710 0.678 hectare;
(b) Lot 711 18.9232 hectares; and
(c) Lot 712 2.2948 hectares.

[4] The entire land was acquired under the LAA pursuant to *Gazette* Notification No 2 *Jilid* 47 dated 15 January 2004. The purpose of the acquisition was for the construction of low cost housing project.

[5] An enquiry was conducted by the land administrator under s 12 of the LAA. Upon conclusion of the enquiry, a written award in Form G was prepared by the land administrator on the three lots which are as follows:

(a) Lot 710: RM258,000 per hectare or RM2.40 per sqft;

(b) Lot 711: RM66,500 per hectare or RM0.62 per sqft; and

(c) Lot 712: RM345,000 per hectare or RM3.20 per sqft.

[6] The appellants objected to the amount of compensation awarded and in reliance on s 38 of the LAA, they filed their respective written applications in Form N to the land administrator requiring that the latter refer the matter to the High Court for its determination. The land administrator accordingly referred the matter to the High Court by way of reference in Form O as required under s 38(5) of the LAA. Henceforth, the land reference proceeding in the High Court.

[7] The land reference proceeding was presided by the learned judicial commissioner. He was assisted by two assessors, namely, Puan Norma bt Kassim, a government valuer and Encik Kamarulzaman bin Awang, a private valuer. After hearing the parties and after taking into account the concurrent opinion of the two assessors on the market value of the land, the learned judicial commissioner awarded an additional compensation of RM1,589,720.48 for the land. The concurrent opinion of the two assessors as to the market value of the land was RM1.60 per sqft.

[8] Still, aggrieved with the additional amount of compensation awarded by the learned judicial commissioner, the appellants appealed to the Court of Appeal. On 27 July 2012, the Court of Appeal dismissed the appeal. Hence the two matters before us.

CIVIL APPLICATION FOR LEAVE TO APPEAL

[9] At the outset learned counsel for the appellants informed us that the application for leave to appeal was filed out of an abundance of caution. In fact, he submitted that in cases of this nature, there is no necessity for leave to appeal. He contended that under s 49(1) of the LAA an appeal lies automatically to the Federal Court against any decision of the Court of Appeal.

[10] The learned State Legal Advisor of Perlis for the respondents contended otherwise. He submitted that the appellants have no automatic right of appeal but must first obtain leave to appeal pursuant to s 96(a) of the Courts of Judicature Act 1964 ('CJA').

FINDINGS

[11] The appellate jurisdiction of the Federal Court in respect of civil matters is provided for under s 96(a) of the CJA which provides as follows:

> 96 Subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court —
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> (a) From any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in exercise of its original jurisdiction involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage.

[12] It is clear from the above provision that in civil cases leave of the Federal Court is required before an appeal can be lodged to the Federal Court against the decision of the Court of Appeal. But there are exceptions as there are statutes which allow an aggrieved party an automatic right to appeal to the Federal Court without the necessity of obtaining leave under s 96(a) of the CJA. A good example of such a statute is the Legal Profession Act 1976 ('LPA'). With regard to the right of appeal, s 103E of the LPA provides as follows:

> Any appeal against the decision of the High Court shall lie to the Court of Appeal and thereafter to the Federal Court.

[13] In *Lau Keen Fai v Lim Ban Kay @ Lim Chiam Boon & Anor* [2012] 2

MLJ 8 ('Lau Keen Fai') the Federal Court in deciding that s 103E of the LPA allows the aggrieved party an automatic right of appeal to the Federal Court from the decision of the Court of Appeal gave the following reasons:

> [6] The new amended provision of s 103E of the LPA now permits an appeal against the decision of the High Court to the Court of Appeal and thereafter to the Federal Court. There is no other specific provision in the LPA requiring that leave must first be obtained for an appeal to be lodged in the Federal Court.

[14] The question is whether s 49(1) of the LAA should be given a similar interpretation. Section 49(1) of the LAA reads as follows:

> Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 *may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:*
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[15] We are of the view that s 49(1) of the LAA should be accorded similar interpretation as s 103E of the LPA. Like s 103E of the LPA there is no requirement under s 49(1) of the LAA that leave to appeal must first be obtained before an appeal can be lodged in the Federal Court. Thus, in the present case, there is no necessity for the appellants to file the application for leave to appeal. In the circumstances, the appellants' application for leave to appeal is hereby struck out with costs.

CIVIL APPEAL NO 01(F)-20–08 OF 2012(R)

[16] The main issue in this appeal revolves over the interpretation of s 40D of the LAA which reads as follows:

> 40D Decision of the Court on compensation.
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> (1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.
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> (2) Where the assessors have each arrived at a decision which differs from each other than the Judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by that assessor.
>
> (3) Any decision made under this section is final, and there shall be no further appeal to a higher court on the matter.

[17] Thus, while s 49(1) of the LAA allows any interested person to appeal against the decision of the High Court to the Court of Appeal, s 40D appears to have restricted the ambit of such an appeal. Section 40D(3) clearly provides that any decision as to the amount of compensation awarded shall be final and there shall be no further appeal to the higher court on the matter. This non-appealable provision of s 40D(3) is further reinforced by the proviso of s 49(1) which reads:

> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[18] Historically speaking, s 40D is a new section introduced by the Land Acquisition (Amendment) Act 1997 ('Amendment Act 1997'). The Amendment Act 1997 had also, inter alia, amended the proviso of s 49(1) of the LAA. Before amendment the proviso of s 49(1) read:

> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom unless the amount awarded by the Court exceeds five thousand ringgit.

[19] Thus, even before the Amendment Act 1997 there was already an existing bar on the right of appeal by an aggrieved party on the award of compensation. The right of appeal against the amount awarded only arose when the amount exceeds five thousand ringgit.

[20] With the introduction of s 40D and the amendment to the proviso of s 49(1), the intention of the Parliament is very clear ie to preclude any party from appealing against the order of compensation made by the High Court. The effect of the introduction of s 40D and the amendment to the provision of s 49(1) of the LAA was discussed by this court in *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125. Hashim Yusoff FCJ speaking for the Federal Court said as follows:

> It is trite law that courts must give effect to the clear provisions of the law. In the instant appeal, I do not see anything ambiguous in ss 40D(3) and 49(1) of the Act. In view of this, I am of the view that the appellant is precluded from appealing against the order compensation issued by the learned trial judge.

[21] We have no reason to depart from the above view. However, before us learned counsel for the appellants submitted that the appeal was not against the compensation awarded but rather the wrong principle of law applied by the High Court in its assessment and arriving at the amount of compensation as it did. With respect, based on the record of proceedings before us, we find that

what was in dispute before the land administrator and later before the learned judicial commissioner was on the issue of compensation for acquisition of the land.

[22] Before the High Court, the complaint was against the fact that the land administrator had valued the land separately and attaching separate valuation to each of the three lots. It was argued that the land ought to be valued as a single entity at RM345,000 per hectare which is equivalent to RM3.20 per sqft as awarded to Lot 712 by the land administrator. The High Court accepted the appellants' argument that the land ought to be valued as a single entity but rejected the contention that it ought to be valued at RM3.20 per sqft. Both assessors were unanimous in their opinion that the land ought to be valued at RM1.60 per sqft. The learned judicial commissioner applying s 40D (1) of the LAA accordingly accepted the opinion of the assessors, resulting in the award by the land administrator being increased from RM2,093,391.20 to RM3,683,111.68. The additional compensation awarded for the land was RM1,589,720.48.

[23] Clearly from the above, the High Court had addressed the principal complaint of the appellants that the land should be treated as one whole land, and the assessment of the market value should be for the whole land and not as individual lots as was done by the land administrator. The appellants' complaint before the Court of Appeal was basically on the amount of compensation awarded by the High Court. This is clearly reflected in the notice of appeal lodged by the appellants against the decision of the High Court which reads as follows:

NOTIS RAYUAN

Sila ambil perhatian bahawa Perayu-perayu/Pemohon-pemohon yang ke 2,4,16,17,18,26,27,35,36 dan 38 dalam perkara di atas tidak berpuas hati dengan keputusan Yang Arif Pesuruhjaya Kehakiman TUAN MOHD ZAKI BIN ABDUL WAHAB yang diberikan di Mahkamah Tinggi Malaya di Kangar yang bersidang di Alor Setar *merayu kepada Mahkamah Rayuan Malaysia terhadap keseluruhan keputusan tersebut mengenai pampasan tambahan.*

Bertarikh pada 23 haribulan Mei, 2011

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Peguamcara bagi Perayu/perayu

Pemohon-pemohon yang ke 2,4,

16,17,18,26,27,35,36 dan 38

(Emphasis added.)

[24] From the underlined passage it is clear that the appeal herein is against

A the amount of compensation awarded. In our considered view, the appeal herein is nothing more than an attempt to circumvent the salient provisions of s 40D and 49(1) of the LAA which precludes any party from appealing against the award of compensation.

B **[25]** For the above reasons, the appellants' appeal is dismissed with costs.

Application for leave to appeal struck out with costs and appeal dismissed with costs.

Reported by Ashok Kumar

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